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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,225	11/08/2000	Keith Luker	1511-00	1140

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EXAMINER

SORKIN, DAVID L

ART UNIT PAPER NUMBER

1723

DATE MAILED: 10/07/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

72-9

# Office Action Summary

Application No.

09/708,225

Applicant(s)

LUKER, KEITH

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 21-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Art Unit: 1723

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of claims 1-20 in Paper No. 9 is acknowledged.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7, 9-11, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In claim 7, there is lack of antecedent basis for "said first and subsequent channels".

5. In claim 9, there is lack of antecedent basis for "said first and subsequent channels".

6. In claim 10, there is lack of antecedent basis for "said first and subsequent channels".

7. In claim 11, there is lack of antecedent basis for "said first and subsequent channels".

8. In claim 14, the scope of "unconnected" is unclear.

9. In claim 15, there is lack of antecedent basis for "said cross-axial channels".

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-11 and 13-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Araki (US 3,184,790). Regarding claim 1, Araki ('790) discloses an extruder mixer comprising a rotatable elongated screw (2) and means for rotating said screw (see col. 3, line 59 to col. 4, line 1), said screw having a mixing section having an inlet channel (5, for example at the 11 o'clock position in Fig. 2), flowingly connected to a cross-axial pump (4, for example at the 10 o'clock position in Fig. 2), wherein a downstream inlet channel (5, for example at the 9 o'clock position in Fig. 2) is connected to further feed at least one downstream cross-axial pump (4, for example at the 8 o'clock position in Fig. 2 that is bounded by a flight on at least one side (4, for example at the 6 o'clock position in Fig. 2). The extruder mixer has an output (1). Note: as held in *Ex parte Thilbault*, 164 USPQ 666,667 (Bd. App. 1969) "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim". Regarding claim 2, the cross-axial pumps are bounded by channels on more than one side (see Fig. 2). Regarding claim 3, an upstream feeder is flowingly connected (see col. 2, lines 34-35). Regarding claim 4, a screw channel is provided (see col. 2, lines 34-35). Regarding claim 5, an output flight (3) is flowingly connected to a downstream flight of said mixer section. Regarding claim 6, an output

Art Unit: 1723

flight (3) is flowingly connected to a channel of said extruder mixing section. Regarding claim 7, the dimensions of the channels are substantially the same as each other (see Fig. 2). Claim 8, fails to further structurally limit the claimed apparatus because the orientation of a claimed apparatus is a matter of use, not structure. The manner in which an apparatus is used does not differentiate a claimed apparatus from the prior art. See MPEP 2114. Regarding claim 9, the height of the walls of the channels are slightly different (see Fig. 2). Regarding claims 10 and 11, subsequent pumps such that the dimensions of said first and subsequent pumps are the same and different from each other are both disclosed (see Fig. 2, for example at the 2, 4, 8 and 10 o'clock positions). Regarding claim 13, said channels are oriented at an angle to the screw axis (see col. 2, lines 44-47). Claim 14 is difficult to address do to its high degree of indefiniteness; however, a channel bounded by a flight on one side is disclosed (see Fig 2). Regarding claim 15, at least some of said channels are bounded by a flight on two sides (see Fig. 2). Regarding claim 16, the manner in which an apparatus is used does not differentiate a claimed apparatus from the prior art. See MPEP 2114. Regarding claim 17, resistance devices (4) are provided on said screw. Regarding claim 18, there are multiple inlet channels (see Fig. 2). Regarding claim 19, there are multiple connected inlet flights (see Figs. 1 and 2). Regarding claim 20 there are multiple connected outlet flights (see Figs. 1 and 2).

12. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Housz (US 4,218,146). Regarding claim 1, Housz ('146) discloses an extruder mixer comprising a rotatable elongated screw (4) and means for rotating said screw (see col.

Art Unit: 1723

6, lines 21-23), said screw having a mixing section having an inlet channel (17), flowingly connected to a cross-axial pump (14), wherein a downstream channel (17 or 18) is connected to further feed at least one downstream cross-axial pump (14 or 13) that is bounded by a flight (13) on at least one side. The extruder mixer has an output (see col. 6, lines 23-28). Note: as held in *Ex parte Thilbault*, 164 USPQ 666,667 (Bd. App. 1969) "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim".

Regarding claim 2, the cross-axial pumps are bounded by channels on more than one side (see Fig. 3). Regarding claim 3, an upstream feeder (5) is flowingly connected. Regarding claim 4, a screw channel is provided (see Fig. 1). Regarding claim 5, an output flight (7) is connected to a downstream flight of said mixer section. Regarding claim 6, an output flight (7) is flowingly connected to a channel of said extruder mixing section. Regarding claim 7 and 9, similarly and differently dimensioned channels are disclosed (see Fig. 3). Claim 8, fails to further structurally limit the claimed apparatus because the orientation of a claimed apparatus is a matter of use, not structure. The manner in which an apparatus is used does not differentiate a claimed apparatus from the prior art. See MPEP 2114. Regarding claims 10 and 11, subsequent pumps such that the dimensions of said first and subsequent pumps are the same and different from each other are both disclosed (see Fig. 3). Regarding claim 12, said channels are oriented substantially parallel to the screw axis (see Fig. 1). Regarding claims 13, said channels may be oriented at an angle to or parallel to the screw axis (Figs. 2 and 6). Claim 14 is difficult to address do to its high degree of indefiniteness; however, a

Art Unit: 1723

channel bounded by a flight on one side is disclosed (see Fig 3). Regarding claim 15, at least some of said channels are bounded by a flight on two sides (see Fig. 3).

Regarding claim 16, the manner in which an apparatus is used does not differentiate a claimed apparatus from the prior art. See MPEP 2114. Regarding claim 17, resistance devices (13,14) are provided on said screw. Regarding claim 18, there are multiple inlet channels (see Fig. 3). Regarding claim 19, there are multiple flowingly connected inlet flights (see Figs. 1 and 2). Regarding claim 20 there are multiple flowingly connected outlet flights (see Figs. 1 and 2).

### ***Response to Arguments***

13. Applicant discusses supposed differences between the instant invention and the prior art, but makes no attempt to direct the discussion toward any claims.

14. Applicant implies the "first inlet channel" of in the instant invention is bounded only one side; however, it is clear from 1b that the first inlet channel is bounded on one side by flight 22 and the other side by flight 26.

### ***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

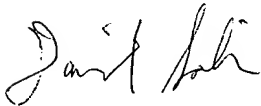
Art Unit: 1723

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

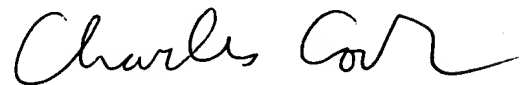
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

October 3, 2002



CHARLES E. COOLEY  
PRIMARY EXAMINER